



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[Docket DARS-2023-0007]

RIN 0750-AL69

Defense Federal Acquisition Regulation Supplement: Contract Administration Office Functions Relating to Direct Costs (DFARS Case 2022-D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify when a contract administration office has authority to negotiate and settle direct costs questioned in incurred cost audits.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to amend the DFARS by adding to section 242.302(b) an additional contract administrative function delegable from a procuring contracting office to a contract administration office. DFARS 242.302(b) specifies

functions performed by the contract administration office "only when and to the extent specifically authorized" by the procuring contracting office, as stated in Federal Acquisition Regulation (FAR) 42.302. Any administrative functions unspecified under FAR 42.302 or DFARS 242.302, and not otherwise delegated, remain the responsibility of the procuring contracting office. This rule explicitly allows delegation of authority from the procuring contracting office to the Government contract administration office to negotiate and settle direct costs questioned in incurred cost audits.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it merely involves assignment among DoD agencies of an existing contract administrative function. This rule does not have a significant cost or administrative impact on contractors or offerors, and it

does not have a significant effect beyond DoD's internal operating procedures.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of

Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 242

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 242 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 242.302 by adding paragraph (b) (S-71) to read as follows:

242.302 Contract administration functions.

* * * * *

(b) * * *

(S-71) (A) Except for classified contracts, negotiate or settle questioned direct costs in an incurred cost audit. The procuring contracting officer may delegate this authority to the contract administration office (CAO) only upon prior coordination and agreement with the CAO. Upon such delegation, the procuring contracting officer shall provide the CAO access within 30 days to all supporting documentation in their possession related to the questioned direct costs in an incurred cost audit.

(B) After settlement of the questioned direct costs, the CAO shall provide the procuring contracting office the results of the settlement. The procuring contracting office shall make any adjustments resulting from the settlement on affected contracts and report such adjustments to the CAO.